

REMARKS

Claims 7, 8/7, 9-15, 21/7, 22/7, 23/7, 24/7 and 25/7, 32 and 33-38 are pending in the application, of which claims 1-6, 8/1-8/6, 12-14, 15/1-15/6, 16-20, 21/2, 21/4, 21/6, 22/2, 22/4, 22/6, 23/3, 23/4, 23/5, 23/6, 24/3, 24/4, 24/5, 24/6, 25/3, 25/4, 25/5, 25/6, and 26-31 are withdrawn from consideration as being directed to non-elected species. Applicants have requested that claims 12-14 be examined for reasons stated below.

Claims 7 and 32 are independent claims, presently under examination.

Claims 9, 10, 21/7, 22/7, 23/7, 24/7, and 25/7 stand rejected under 35 U.S.C. § 112(2).

Claims 7, 8/7, 9-11, 15/7, 21/7, 23/7, 24/7, 25/7 and 32 stand rejected under 35 U.S.C. § 102.

Claims 22/7, 23/7 24/7 and 25/7 stand rejected under 35 U.S.C. § 103.

Claims nos. 33-38 had been added as new in the Supplemental Preliminary Amendment dated May 10, 2006.

The specification and the claims have been amended to correct obvious informalities and to clarify the invention. No claim amendments were made for the purposes of narrowing the scope of claims. It is believed that the amendments do not involve the addition of any new matter.

I. REINSTATEMENT OF ELECTED CLAIMS 12-15; AND PREVIOUSLY AMENDED CLAIMS AND NEW CLAIMS 33-38 CROSS IN THE

The Office Action states:

Note that claim 12 claims a **separate** textile layer including an array of intersecting structural support members forming apertures. The elected embodiment (fig. 4) lacks this feature.

(See Office Action, par. 1, page 2)

Applicants have amended Specification herein and provide an indication that textile layer 27 is provided in Figure 4. Accordingly, Applicant's respectfully request that claims 33-38 are readable on elected Species D, illustrated in Figure 4.

With regards to Claims nos. 33-38, Claims nos. 33-38 have been added in a Supplemental Preliminary Amendment dated and faxed to the USPTO on May 12, 2006, and it should be noted that claims 33-38 are readable on elected Species D, illustrated in Figure 4.

It should be further noted that various claims were amended in the Supplemental Amendment dated and faxed to the USPTO on May 10, 2006.

In summary, Applicants respectfully submit that claims 7-15, 21-25, 32 and 33-38 are readable on elected Species D, illustrated in Figure 4, of which claims 7 and 32 are the independent claims.

II. CLAIMS 9-11, 21/7, 22/7, 23/7, 24/7 AND 25/7 ARE DEFINITE WITH THE MEANING OF 35 U.S.C. 112(2) IN VIEW OF THE AMENDMENTS TO THE CLAIMS AND BECAUSE THE CLAIMS APPRISE THOSE SKILLED IN THE ART OF THE SCOPE OF THE INVENTION

Claims 9-11, 21/7, 22/7, 23/7, 24/7 and 25/7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office Action states:

In claim 9, what structural elements are intended to be inclusive in the terminology "other non-limiting arrangements" is not understood. In claim 9, line 1; and in claim 10, line 1; the phrase "said truss units" lacks an antecedent. In claims 23 and 25, what types of glass and fabric are intended by the phrases "S2 glass fabric" and "Zylon fabric". In claims 23 and 25, the term "combination thereof" should be (combinations thereof).

In claims 21/7, 22/7, 23/7, 24/7, and 25/7, the terminology "comprise at least one of" should be claimed as (selected from the group consisting of) and use of the term (and) rather than "and/or" or "or".

(See Office Action, par. 2, page 2)

Applicants have amended claims 21/7, 22/7, 23/7, 24/7, and 25/7 as suggested by the Examiner so as to provide antecedent basis and particularly point out and distinctly claim the Applicant's invention. These amendments were not made for the purpose of narrowing the scope of the claims. Applicants respectfully request that the Examiner's rejections of claim 21/7,

22/7, 23/7, 24/7, and 25/7 under 35 U.S.C. 112(2) be withdrawn.

Moreover, the Office Action states:

3. Claims 22/7, 23/7, 24/7, and 25/7 contain the trademark/trade name “Kevlar”, “Spectra”, “S2”, and “Zylon”. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a constituent material of the protection structure and, accordingly, the identification/description is indefinite.

(See Office Action, par. 3, page 3)

Applicants have amended claims 23/7, 24/7, and 25/7 as identified by the Examiner and respectfully submit such amendment are in accordance with proper identification of registered trademarks. As the USPTO recognized in MPEP § 608.01(v) in part:

Names used in trade are permissible in patent applications if:
(A) Their meanings are established by an accompanying definition which is sufficiently precise and definite to be made a part of a claim, *or*
(B) *In this country, their meanings are well-known and satisfactorily defined in the literature.*

Condition (A) *or* (B) must be met at the time of filing of the complete application.

(emphasis provided)

Further, as the USPTO recognized in MPEP § 608.01(v) in part:

However, if the product to which the trademark refers is set forth in such language that its identity is clear, the examiners *are authorized to permit the use of the trademark if it is distinguished from common descriptive nouns by capitalization*. If the trademark has a fixed and definite meaning, it constitutes sufficient identification unless some physical or chemical characteristic of the article or material is involved in the invention. In that

event, as also in those cases where the trademark has no fixed and definite meaning, identification by scientific or other explanatory language is necessary. *In re Gebauer-Fuelnegg*, 121 F.2d 505, 50 USPQ 125 (CCPA 1941).:

(emphasis provided)

Applicants have capitalized the trademark names—KEVLAR, SPECTRA, S2, and ZYLON—and accordingly, Applicants respectfully request that the Examiner's rejections of claim 23/7, 24/7, and 25/7 under 35 U.S.C. 112(2) be withdrawn. Claim 22/7 does not include a trademark name.

III. CLAIMS 7, 21/7, AND 32 ARE NOT ANTICIPATED UNDER 35 U.S.C. § 102(b) BY BURKE (US 4,758,299), CLAIMS 7, 8/7, 9-11, 15/7, 21/7 AND 32 ARE NOT ANTICIPATED UNDER 35 U.S.C. § 102(b) BY DAY ET AL. (US 6,740,381 B2), AND CLAIMS 7, 8/7, 9-11, 15/7, 21/7, 23/7, 24/7, 25/7 AND 32 ARE NOT ANTICIPATED UNDER 35 U.S.C. § 102(b) BY TONI ET AL. (US 5,455,096); AND CLAIMS 23/7, 24/7 AND 25/7 ARE PATENTABLE UNDER 35 U.S.C. § 103 OVER DAY ET AL. IN VIEW OF TONI ET AL. AND CLAIMS 22/7 ARE PATENTABLE UNDER 35 U.S.C. § 103 OVER DAY ET AL. IN VIEW OF STRASSER ET AL. (US 5,970,843) BECAUSE THE APPLIED PRIOR ART AS A WHOLE FAILS TO SUGGEST THE APPLICANTS' INVENTION.

Claims 7, 21/7, and 32 stand rejected under 35 U.S.C. § 102(b) by Burke (US 4,758,299), Claims 7, 8/7, 9-11, 15/7, 21/7 and 32 stand rejected under 35 U.S.C. § 102(b) by Day et al. (US 6,740,381 B2, hereinafter "Day"), and claims 7, 8/7, 9-11, 15/7, 21/7, 23/7, 24/7, 25/7 and 32 stand rejected under 35 U.S.C. § 102(b) by Toni et al. (US 5,455,096, hereinafter Toni); and claims 23/7, 24/7 and 25/7 were rejected under 35 U.S.C. § 103 over Day et al. in view of Toni and claims 22/7 was rejected under 35 U.S.C. § 103 over Day in view of Strasser et al. (US 5,970,843, hereinafter "Strasser"). In particular, the Office Action states:

4. Claims 7, 21/7, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Burke (299).

Burke (299) discloses a protective structure comprising:

- | | |
|---------------------------------|----|
| a) an open cell core structure; | 14 |
| b) a top thee sheet; | 24 |
| c) a bottom face sheet; | 26 |

- | | |
|--|----|
| d) a projectile arresting structure; and | 16 |
| e) a fragment catching structure. | 18 |

(See Office Action, par. 4, page 3)

The Office Action further states:

6. Claims 7, 8/7, 9-11, 15/7, 21/7, and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Day et al. (381).

Day et al. disclose a protective structure comprising:

- | | |
|--|----------|
| a) an open cell core structure; | 86, 83 |
| b) truss units; | 86 |
| c) a top face sheet; | 87 |
| d) a bottom face sheet; | 87 |
| e) a projectile arresting structure; and | 84 or 85 |
| f) a fragment catching structure. | 84 or 85 |

(See Office Action, par. 6, page 4)

The Office Action further states:

10. Claims 7, 8/7, 9-11, 15/7, 21/7, 23/7, 24/7, 25/7, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Toni et al (096).

Toni et al. disclose a protective structure comprising:

- | | |
|---------------------------------------|---------------------|
| a) an open cell core structure; | 24, 26 |
| b) truss units; | 24, 26 |
| c) a top face sheet; | 20 |
| d) a bottom face sheet; | 22 |
| e) a projectile arresting structure; | 30 or 32 |
| f) a fragment catching structure; and | 30 or 32 |
| g) a Kevlar material | col. 5, lines 54-62 |

(See Office Action, par. 10, pages 5-6)

Applicants respectfully traverse the rejection of 7, 21/7, and 32 as being rejected under 35 U.S.C. § 102(b) by Burke (US 4,758,299), claims 7, 8/7, 9-11, 15/7, 21/7 and 32 as being rejected under 35 U.S.C. § 102(b) by Day, and claims 7, 8/7, 9-11, 15/7, 21/7, 23/7, 24/7, 25/7 and 32 as being rejected under 35 U.S.C. § 102(b) by Toni; and claims 23/7, 24/7

and 25/7 as being rejected under 35 U.S.C. § 103 over Day in view of Toni, and claims 22/7 as being rejected under 35 U.S.C. § 103 over Day in view of Strasser because the applied prior art fails to teach or suggest the following present invention:

- i) A protection structure comprising, as recited in base claim 7, which calls for in part:
 - a projectile arresting structure....and/or
 - a fragment catching structure....
- ii) A method of making a protection structure, as recited in base claim 32, which calls for in part:
 - disposing a projectile arresting layer...
 - disposing a fragment catching layer....

In general, Applicants respectfully submit that paragraphs 4, 6 and 10 of the Office Action has been erroneously applied to the present invention. Moreover, the Office Action fails to correlate the applied references to the claimed elements. Applicants respectfully submit that anticipation and the prima facie case of obviousness has neither been presented nor achieved by the Office Action. Again, Applicants submit that the applied references are not accurately interpreted by the Examiner.

MPEP §2131 provides:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

For instance, Burke is cited for allegedly listing “reinforcing sheets, 16, 18,” Day is cited for allegedly listing “web segments 84, 85,” and Toni is cited for allegedly listing “composite laminate, 30” and “barrier member, 32.” Contrary to the Examiner’s statement that all elements are disclosed in the Burke, Day and/or Toni references, Applicant respectfully submits that

projectile arresting layer element and fragment catching layer is not; the rejection is unsupported by the art and the should be withdrawn.

Accordingly, in view of the differences of base claims 7 and 32 and Burke, Day and/or Toni, Applicants respectfully urge that the rejections of 7, 8/7, 9-11, 15/7, 21/7, 23/7, 24/7, 25/7 and 32 be withdrawn.

Moreover, the Examiner's reliance on Strasser or Toni does not supply the deficiencies of the Day disclosure vis-à-vis Applicants' claims 7. A dependent claim contains all the limitations of the intermediate claim upon which it depends and is non-obvious under Federal Circuit guidelines if the intermediate claim upon which it depends is allowable. Hence, it is the Applicants' position that the cited art as whole fails to teach or suggest the claimed invention within the meaning of 35 U.S.C. § 103 and request that the rejection of claims 22/7, 23/7 24/7 and 25/7 be withdrawn.

IV CONCLUSION

For the foregoing reasons, Applicants respectfully submit that claims 7, 8/7, 9-15, 21/7, 22/7, 23/7, 24/7 and 25/7, 32 and 33-38 are in condition for allowance, and a notice for allowance is solicited. Should questions arise during examination, the Examiner is welcome to contact the Applicants' attorney at the telephone listed below.

Please charge any excess fees due and credit any overpayment to Charge Account No. 50-0423.

Respectfully submitted,



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Date: October 11, 2006